ARKANSAS SUPREME COURT

No. CR06-477

NOT DESIGNATED FOR PUBLICATION

LANCE ALAN BRANSCUM
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered November 30, 2006

PRO SE APPEAL FROM THE CIRCUIT COURT OF PULASKI COUNTY, CR 99-812, HON. JOHN W. LANGSTON, JUDGE

AFFIRMED.

PER CURIAM

On September 1, 2005, appellant Lance Alan Branscum, an inmate incarcerated in the Arkansas Department of Correction, filed in Pulaski County Circuit Court a *pro se* petition for writ of *habeas corpus* requesting scientific testing under Act 1780 of the 2001 Acts of Arkansas, codified as Ark. Code Ann. §§ 16-112-201–16-112-207 (Repl. 2006). The petition was denied and appellant now brings this *pro se* appeal of the order denying relief.

In 1999, a jury found appellant guilty of capital murder and sentenced him to life imprisonment. This court affirmed the judgment. *Branscum v. State*, 345 Ark. 21, 43 S.W.3d 148 (2001). As set out in our opinion, the evidence presented at trial was that appellant had been friends with the victim, Julie Irmer, and her husband, Mark Irmer, for several years, and the Irmers had allowed appellant to live in a travel trailer on their property prior to the murder.

The morning the murder was discovered, Mark Irmer returned home from work, and appellant prevented him from entering his home, at one point placing a knife to Mark's neck.

Appellant went into the home, and when Mark later returned with a neighbor, Terry Hilliard, appellant continued to refuse to allow Mark to go into the home. Mark called 911 from the home of another neighbor, and the police found Julie's body in the bathroom of the home. She was nude, her head covered with a bloody laundry bag with the drawstring pulled tight around her neck, and her hands bound.

Appellant was located in Oklahoma several days later. When police officers traveled to Oklahoma to return appellant to Arkansas, appellant gave a statement concerning the events surrounding Julie Irmer's death. In that statement, appellant claimed that he and Julie had been having an affair for some time, that they were engaging in "rough sex" on the night of her death, and that while they were having intercourse, Julie fell off the bed and hit her head on a nearby night stand. Appellant claimed that he put the laundry bag over Julie's head to stop the blood flow, and admitted that when he left the home, Julie was dead.

Appellant's petition under Act 1780 made requests for a number of tests, which the trial court denied based upon a review of the case file, the trial record and pleadings, without a hearing. The court found that appellant's statement, along with other evidence introduced at trial, conclusively established that appellant was with the victim at the time of her death, that identity was not an issue in the trial, and that, because appellant failed to make a prima facie case that identity was an issue, appellant failed to meet the threshold requirements of Act 1780. Appellant raises two points on appeal, as follows: (1) the trial court erred in determining that appellant failed to establish a prima facie case, in that appellant asserts that identity was an issue; (2) appellant was denied due process because the State failed to file an answer to his petition.

We do not reverse a trial court's decision granting or denying postconviction relief unless it

is clearly erroneous. *Johnson v. State*, 356 Ark. 534, 157 S.W.3d 151 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Id.*; *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

Section 16-112-202(7) provides that a defendant who brings a petition under Act 1780 may make a motion for testing if "[t]he identity of the perpetrator was at issue during the investigation or prosecution of the offense being challenged." Appellant contends that identity was an issue because one of the investigating officers stated that Mark Irmer and Terry Hilliard were also suspects and the medical examiner opined that more that one person could have been involved in the murder.

We cannot say that the trial court was clearly erroneous in determining that identity was not at issue. The evidence clearly indicated that appellant left the state once it was clear that Julie Irmer's body would be found. He does not dispute that he was in the home shortly before the body was discovered and attempted to prevent others from gaining entry. Although some of his arguments appear contradictory to that position, even now, appellant does not contest that he was with Julie Irmer when she was, at least, severely injured, if not, in fact, when she died. He only contends that her death was either accidental or accomplished after he left her unconscious and bloody body. We will not hold that identity was at issue under these circumstances.

As for appellant's second point, that he was denied due process because the State failed to file a response, we cannot say that any such failure should be reversible error under the circumstances of this case. Appellant argues that he was not allowed to "state his case" as a result of the State's failure to respond. Yet section 16-112-204 does not provide for any further pleadings, other than as the court may order, once the State has filed its response. Under section 16-112-205(a),

the court is not required to set a hearing if the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief. Because the record clearly demonstrates that identity was not at issue here, the record did show that appellant was entitled to no relief. Even had the State filed a response, the trial court should have denied the petition, as it did, without a hearing. This court has repeatedly held that we do not reverse in the absence of a demonstration of prejudice. *Perroni v. State*, 358 Ark. 17, 186 S.W.3d 206 (2004). As appellant has demonstrated no prejudice from the State's failure to respond, we affirm the decision denying relief under Act 1780.

Affirmed.

Glaze, J., not participating.